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File No. O. Extradition 42

Legal Department

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Subject:— Opinions under th Indian Extradition Act, 1903

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Legal Department File No.0.Extradition/42.

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The District Magistrate, Surat, states that the provisions of section 19 of the Extradition Act,1903, and section 29 of the Fugitive Offenders Act,1881, have been complied with. He possibly means thereby that the evidence was duly recorded, in the absence of the accused who is absconding, by the Magistrate under section 512 of the Criminal Procedure Code,1898 and section 29 of the Fugitive Offenders Act,1881, and that warrants, depositions etc. have been duly sealed. But there appear to be certain defects in the evidence. The deposition at page 82 ante bears a thumb mark, but there is no endorsement of the Magistrate as to whose mark it is. Secondly, the copy of the certificate at page 25 ante is apparently incorrect: it purports to have been signed by the First Class Magistrate, Jalalpur, but the body of the certificate shows that it was issued by Rao Bahadur Bhadrapur, District Magistrate, Surat. Apart from these defects, which should be remedied, the procedure so far appears to be in accordance with law. There was a charge preferred against the accused in the Court of the First Class Magistrate, Jalalpur; there was evidence before him that the accused is a fugitive, and the Magistrate has recorded evidence, under section 512 of the Criminal Procedur Code,1898, and section 29 of the Fugitive Offenders Act,1881, which shows that the accused was guilty of an offence of cheating by personation punishable under section 419 of the Indian Penal Code.

2. The extradition proposed is under Part I of the Fugitive Offenders Act,1881, The authorities in Australia must be satisfied that the offence with which the accused is charged is one to which that Act applies. By section 19(d) of the Extraditi on Act,1903,the offences committed in British India to which the Fugitive Offenders Act applies are piracy, treason and any offence punishable under the Indian Penal Code with rigorous imprisonment for a term of twelve months or more, or with any greater punishment. All questions of foreign law are questions

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of fact, and the Australian authorities will require proof thereof. As pointed out by Muddiman on Extradition at page 81, the proper mode of proof that the facts alleged against the accused constitute an offence to which the Fugitive Offenders' Act applies is not by the production of the British Indian enactments relied upon but by expert evidence (see Rex Vs. The Governor of Brixton Prison, Ex parte Percival, 1907, 1 K.B.969). For this purpose it will suffice if the Magistrate issues a certificate or the Public Prosecutor makes an affidavit that the facts alleged against the accused constitute an offence punishable, under section 419 of the Indian Penal Code, with rigorous imprisonment for a term of twelve months or more, and that it is an offence to which, by virtue of section 19(d) of the Indian Extradition Act, 1903, the Fugitive Offenders' Act, 1881, applies.

3. The Political & Services Department may consider whether the case is of such importance as to be pursued further in the present circumstances of the international situation.

Sd/ Moos.

Remembrancer of Legal Affairs.

U.R. to P.&S.Deptt. No.2410, dated the 18th March 1942.

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The Resident for Baroda and Gujerat States has issued warrants under section 7 of the Indian Extradition Act for the apprehension and extradition to the Baroda State of sixteen persons. Accused Bai Jivi is charged with abetment of robbery whereas therest are each charged with robbery, house-breaking and mischief. Eleven of the accused have been arrested and were released on bail by the Additional District Magistrate who has submitted a report under section 8A of the Act, but the other accused are not traceable. The question for consideration is whether there is prima facie evidence to justify the surrender of the accused to the Baroda State for trial on the charges made against them.

2. The complainant in this case is one Sanka Madha, of Sadra in the Baroda State, and his story is briefly as follows Accused Bai Jivi is his wife. Recently, accused Jesing Ramsi and Khengar Ramsi carried her off from his house, whereupon the complainant instituted criminal proceedings against them; the matter was ultimately compromised and Bai Jivi was brought back to live with her husband. One night, ten or fifteen days thereafter, the accused Jesing Ramsi and 14 others (named in the warrants) raided his house while he and other occupants were asleep. They broke open the main door of the House; Sartan Devji held the complainant firmly while Jesing Ramsi hit him on the head with a stick and Khengar struck him on the neck with a 'barchi'. Jesing then asked Bai Jivi whether there were any ornaments in the house, and the latter pointed out the 'kothla' where they were kept. The complainant having refused to hand over the keys, the accused broke open the kothla, and carried away the gold and silver ornaments and Rs.116 in cash and a turban belonging to the complainant's father. The accused also carried away Bai Jivi. They made away on camels and horses.

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3. The complainant's story is corrobora- testimony of his father Madha Sabhai and Hira Labha, both of whom witnessed the incident. It is true that the complainant himself does not name two of the accused, but that circumstance does not necessarily give rise to doubts regarding his truthfulness. For, according to all accounts, he was inside the house all the time, and his ommission to name these two accused may be due to their having stayed outside. They are named by Madha and Hira. Apart from the direct corroboration of these two witnesses, the complainant's story receives support from the evidence of the doctor (p.175), the watchman (pp.169-171), a neighbour (p.173) and a panch (p.173). It appears that the accused admitted, before the Additional District Magistrate, Ahmedabad, that the complainant had instituted a prosecution against accused Jesing for enticing away Bai Jivi, and that the case was compounded as alleged by the complainant. It is further alleged that an agreement has been made whereunder the witness Hira Lakha, in consideration of sum of Rs.800/- to be paid by Jesing, had agreed to persuade the complainant to divorce Bai Jivi so as to enable jesing to marry her; and that although Jesing has already paid Rs.750/- out of the stipulated sum, the complainant has not divorced the woman. It is clear, therefore that there is a dispute between the complainant and the accused Jesing regarding Bai Jivi. Secondly, the fact that Bai Jivi is not living with her husband but is found in the Viramgam Taluka is also sighificiant. Moreover, it appears that two of the stolen articles were recovered from the houses of the Accused Sartan and Khuma. These circumstances also corroborate and lend support to the complainants story.

4. The charge against Bai Jivi is different from those against.....

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against the other accused. As regards the latter, their conduct indicates that they conspired and acted in execution of a common object. Although some of the may not have actually taken part in breaking open the house and the kothla, they stood by to prevent resistance, and in the circumstances disclosed in the evidence, they must be deemed to have committed the offences (section 114 of the Indian Penal Code). There is therefore a prima facie case for their surrender to the Baroda state for trial on charges of robbery, housebreaking, and mischief.

5. The charge against Bai Jivi is that she abetted the other accused in the commission of the robbery. The only act she did was to point out the kothla in which the valuables were kept. The circumstances of the case and her own subsequent conduct indicate that she did, it, not unwillingly and under compulsion, but voluntarily in order to facilitate the commission of the offence, and can be said to have abetted the accused therein within the meaning of section 109, Explanation 2 of the Indian Penal Code. And as she was present when the offence was committed she must be deemed to have committed the offence. (Section 114 of the Indian Penal Code). It appears there is a prima facie case for surrendering her also to the Baroda State for trial.

Sd/Moos.

Remembrancer of Legal Affairs.

U.R. to P and S.D.No.2707, dated the 26th March 1942.

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It is not dispute that a serious dacoity attended with murder, grievous hurt and loss of property worth Rs.8000/- was committed at Umri. The judgment of the Additional Sessions Judge reveals that at least 10-12 persons had taken part in the dacoity. Yet we find only one accused (accused 4) placed on his trial on the charge of d acoity with murder and grievous hurt and three others on the charge of abetting the dacoits. Accused 4 was the only one convicted on his confession. The rest were acquitted. The property has not been traced and the police have not succeeded in bringing the other dacoits to book. All that is alleged against Harising is that the dacoits had camped in his field and that he had helped the dacoits to repair their guns and purchase some cartridges.

2. On the facts disclosed in the judgment of the Additional Sessions Judge there is little chance of the prosecution of Harising being successful. Harising was admittedly not present at Umri where the dacoity was committeed and no part of the loot has been traced to him. There is no suggestion made by any of the accused that Harising was paid or promised money or a share of the booty for helping the dacoits. The retracted confession of the accused who has been sentenced to death will be inadmissible against Harising. The evidence about the purchase of cartridges by Harising for the dacoits is neither satisfactory nor convincing and may perhaps be rejected altogether if Harising is able to establish that the Police Patil of Rudatal who had actually purchased them is hostile to him. It will appear from the affidavits filed in connection with the Exteadition Proceedings that Harising had alleged the existence of ill-feeling between him and the Police Patil. The alleged camping

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of the dacoits in the field of Harising can scarcely be regarded as sufficient evidence to bring home the ~~difficm~~ guilt. The affidavits show that Harising is a big landlord and he cannot be expected to keep a watch over all his field. Wandering tribes are frequently found to camp~~k~~ in open fields without permission. The prosecution of Harising Pragji is therefore not advisable on the evidence so far disclosed.

Sd/Moos.

Remembrancer of Legal Affairs.

U.R. to P.& S.D.No.3664,dated the 30th-1942.

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